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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **BRANDIE MARIE PITSLEY**  
14 **6725 Barkdale Lane**  
**Riverside, CA 92509**

15 **Registered Nurse License No. 644613**

16 Respondent.

Case No. **2010 -140**

**ACCUSATION**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about September 10, 2004, the Board of Registered Nursing issued Registered  
24 Nurse License Number 644613 to Brandie Marie Pitsley (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on December 31, 2009, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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1 8. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed nurse or  
3 deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the  
5 following:

6 . . . .

7 (f) Conviction of a felony or of any offense substantially related to the  
8 qualifications, functions, and duties of a registered nurse, in which event the record of  
9 the conviction shall be conclusive evidence thereof.

10 . . . .

11 9. Section 2762 of the Code states:

12 In addition to other acts constituting unprofessional conduct within the meaning  
13 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
14 licensed under this chapter to do any of the following:

15 . . . .

16 (b) Use any controlled substance as defined in Division 10 (commencing with  
17 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
18 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
19 dangerous or injurious to himself or herself, any other person, or the public or to the  
20 extent that such use impairs his or her ability to conduct with safety to the public the  
21 practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription, consumption,  
23 or self-administration of any of the substances described in subdivisions (a) and (b) of  
24 this section, or the possession of, or falsification of a record pertaining to, the  
25 substances described in subdivision (a) of this section, in which event the record of  
26 the conviction is conclusive evidence thereof.

27 . . . .

## 28 REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the  
qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations  
listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

1 (c) Theft, dishonesty, fraud, or deceit.

2 (d) Any conviction or act subject to an order of registration pursuant to Section  
3 290 of the Penal Code.

4 11. California Code of Regulations, Title 16, section 1445 states:

5 . . . .

6 (b) When considering the suspension or revocation of a license on the grounds  
7 that a registered nurse has been convicted of a crime, the board, in evaluating the  
8 rehabilitation of such person and his/her eligibility for a license will consider the  
9 following criteria:

10 (1) Nature and severity of the act(s) or offense(s).

11 (2) Total criminal record.

12 (3) The time that has elapsed since commission of the act(s) or offense(s).

13 (4) Whether the licensee has complied with any terms of parole,  
14 probation, restitution or any other sanctions lawfully imposed against the licensee.

15 (5) If applicable, evidence of expungement proceedings pursuant to  
16 Section 1203.4 of the Penal Code.

17 (6) Evidence, if any, of rehabilitation submitted by the licensee.

#### 18 **COST RECOVERY**

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
20 administrative law judge to direct a licensee found to have committed a violation or violations of  
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
22 enforcement of the case.

#### 23 **FIRST CAUSE FOR DISCIPLINE**

24 **(March 16, 2007 Criminal Conviction for Evading While Driving Recklessly,  
25 Driving Under the Influence, Driving With a BAC of .08% or More,  
26 and Hit & Run With Property Damage on May 21, 2006)**

27 13. Respondent has subjected her license to disciplinary action under sections 490 and  
28 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
related to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
follows:

1           a.     On or about March 16, 2007, in a criminal proceeding entitled *People of the*  
2     *State of California v. Brandie Marie Pitsley, aka Brandie Marie McMillan*, in Orange County  
3     Superior Court, case number 07HF1004, Respondent was convicted on her plea of guilty of  
4     violating Vehicle Code section 2800.2, evading a police officer while driving recklessly, a felony;  
5     Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol/drugs, a  
6     misdemeanor; Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content  
7     of .08 percent or more, a misdemeanor; and Vehicle Code section 20002, subdivision (a), hit and  
8     run with property damage, a misdemeanor.

9           b.     As a result of the conviction, on or about March 16, 2007, Respondent was  
10    sentenced to three years formal probation, 180 days electronic confinement ("house arrest"), with  
11    credit for three days, completion of a nine-month Level 2 First Offender Program, complete  
12    abstention from alcohol and controlled substances, a driver's license suspension for one year, and  
13    payment of fees, fines, and restitution in the amount of \$390. At a hearing on December 9, 2008,  
14    Respondent's probation was revoked for her poor adjustment to probation supervision. Probation  
15    was reinstated to include incarceration in the county jail for 90 days with credit for 28 days. On  
16    June 5, 2009, Respondent's probation was again revoked and reinstated. Probation is currently  
17    set to expire on May 29, 2010.

18          c.     The facts that led to the conviction were that on or about the evening of May  
19    20, 2006, a busy Saturday night with a large amount of pedestrian and vehicle traffic, a patrol  
20    officer with the Newport Beach Police Department observed a black SUV leave the parking lot of  
21    a liquor store at a high rate of speed. The officer had to respond to another call, so he did not  
22    follow the SUV. A short time later, the officer was contacted by a male subject who stated his  
23    vehicle was just hit by a black SUV that was driving the wrong way on Newport Boulevard and  
24    did not stop. The officer broadcast a description of the vehicle and proceeded to search the  
25    vicinity. While sitting at a stoplight at a nearby intersection, the officer saw the SUV, driven by  
26    Respondent, traveling in the opposite direction. The officer activated his emergency lights and  
27    attempted to stop Respondent. Respondent continued down the street at a high rate of speed.  
28    While attempting to pass another vehicle stopped in traffic, Respondent crossed into oncoming

1 traffic and collided with another vehicle, causing minor injury to its driver. The officer pulled his  
2 patrol car behind Respondent and put it in park. Respondent put her SUV in reverse and backed  
3 into the patrol car in an attempt to flee. Respondent continued to accelerate into the officer's  
4 patrol car causing her tires to smoke. Fearing for his safety, the officer exited his vehicle and  
5 drew his weapon on Respondent. The officer ordered Respondent several times to exit her  
6 vehicle but she refused to comply and continued to back into the patrol car. The officer got close  
7 enough to Respondent to see that she was not armed with a weapon (other than her vehicle),  
8 reached in, and attempted to turn off the ignition. Respondent began screaming and two officers  
9 were required to remove her from the vehicle, arrest and hand-cuff her, and place her in the rear  
10 of the patrol car. The officer noted that Respondent had a strong odor of alcohol emitting from  
11 her breath and person; her eyes were bloodshot and watery. Respondent became combative and  
12 began screaming incoherently and kicking the door of the patrol car, which caused her dress to  
13 fall down to her waist. Respondent had to be placed in hobble restraints to prevent injury.  
14 Respondent was transported to a nearby hospital to provide a blood sample and had to be  
15 restrained to a bed due to her aggressive and combative behavior with hospital staff.  
16 Respondent's blood alcohol content (BAC) was 0.20.

17                                    **SECOND CAUSE FOR DISCIPLINE**

18                                    **(Unprofessional Conduct – Dangerous Use of Alcohol)**

19            14. Respondent has subjected her license to disciplinary action under section 2762,  
20 subdivision (b) of the Code in that on or about May 21, 2006, as described in paragraph 13,  
21 above, Respondent drove a motor vehicle with a BAC of 0.20 percent and was under the  
22 influence of alcohol to an extent or in a manner that was dangerous and injurious to herself, the  
23 public, and to law enforcement officers, and is substantially related to the qualifications,  
24 functions, and duties of a registered nurse.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Conviction of an Alcohol-Related Criminal Offense)**

3 15. Respondent has subjected her license to disciplinary action under section 2762,  
4 subdivision (c) of the Code in that on or about March 16, 2007, as described in paragraph 13,  
5 above, Respondent was convicted of evading a police officer while driving recklessly, and hit and  
6 run with property damage, all while driving under the influence of alcohol and driving with a  
7 blood alcohol content of 0.20. Such unprofessional conduct is substantially related to the  
8 qualifications, functions, and duties of a registered nurse.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
11 and that following the hearing, the Board of Registered Nursing issue a decision:

12 1. Revoking or suspending Registered Nurse License Number 644613, issued to Brandie  
13 Marie Pitsley;

14 2. Ordering Brandie Marie Pitsley to pay the Board of Registered Nursing the  
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.  
18  
19

20 DATED: 9/10/09

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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